IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.7569 of 2006

Mr.Manik Laxman Jadhav ..Petitioner

vs.

1. Mr.Dilip Mohan Pagare ..Respondent

Mr.A.P.Kulkarni for petitioner.
Ms.Rajshri Sawant i/b Mr.Rahul S.Kate for respondent.

CORAM: S.C.DHARMADHIKARI J.
16th June, 2007

P.C.

1. The order that is impugned in this petition is on an app,lication for condonation of delay in filing of the Misc.Civil Appeal to challenge the decree passed against the present petitioner on 21st January, 2006 in Special Civil Suit No.23 of 2005.

2. The decree is of specific performance of an Agreement to sell the Immovable property.

3. After the decree was passed there were some talks of settlement and it appears that before the Executing Court the parties agreed to settle the matter and in lieu of the specific performance, the suit itself was compromised for Rs.1,24,000/- Out of this sum Rs.50,000/0 was paid/deposited in the executing court by the present

petitioner. His case is that thereafter he was advised to file the civil appeal.

4. However, during the pendency of darkhast proceedings and failure of the petitioner to deposit the balance amount, the Court Commissioner was appointed and sale deed was executed on 10th July, 2006. The Court Commissioner has submitted his report before the Trial Court on 12th July, 2006 in that behalf.

5. It is in these circumstances, that the delay condonation application was opposed and the impugned order rejecting the same has been delivered by the lower Appellate Court.

6. Shri Kulkarni and Shri Kate appearing for the judgment debtor and decree holder respectively submit that despite the sale deed, the parties are agreeable to put an end to their dispute and if the entire sum of Rs.1,24,000/- is paid the respondent/decree holder would execute a Deed of Cancellation and reconvey the property to the petitioner. These are the terms agreed and that is how a sum of Rs.50,000/- has been deposited and adjusted accordingly.

7. Shri Kulkarni states that instead of going into the merits of the applciation for condonation of delay and correctness, legality and validity of the impugned order,

the petitioner would be satisfied if a longer period is given to deposit the balance sum of Rs.74,000/- in the executing Court.

8. Shri Kate leaves the matter to the Court.

9. Accordingly, if the petitioner deposits the balance sum of Rs.74,000/- in the executing Court within a period of six smonths from today, the executing court upon joint application of the parties to record the adjustment and mark the decree as satisfied. Thereafter, it would be open for the parties to execute such deeds/documents so as to reconvey the immovable property in question. Failure to deposit the said sum as undertaken by the petitioner through his Counsel before me would entail in the execution being marked satisfied with the sale deed already executed. The petitioner will thereafter forfeit the claim for reconveyance of the property to him.The decree holder is entitled to receive the sum of Rs.50,000/- from the executing court with secured interest. The petition is dismissed in the light of the above common understanding between the parties. The undertakings are accepted. No costs.

(S.C.DHARMADHIKARI J.)